



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

RCH/SPN/HDM/CRH
F. #2018R001309

*271 Cadman Plaza East
Brooklyn, New York 11201*

July 22, 2022

By ECF

The Honorable Brian M. Cogan
United States District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Matthew Grimes
Criminal Docket No. 21-371 (S-1) (BMC)

Dear Judge Cogan:

The government respectfully submits this letter to notify the Court about a potential conflict involving Abbe Lowell, counsel for the defendant Matthew Grimes. Mr. Lowell has been accused by a former client of coercing that client to plead guilty to a crime due to Mr. Lowell's own interests arising out of several Department of Justice matters that personally involve Mr. Lowell. See Motion to Disqualify, United States v. Lum Davis, No. 20-CR-68 (D. Haw.) (hereafter "Lum Davis") (ECF No. 48). The government advises the Court of this information pursuant to its obligation under Second Circuit law so the Court may conduct the appropriate inquiry pursuant to United States v. Curcio, 680 F.2d 881, 888-90 (2d Cir. 1982).

I. Potential Conflicts

On or about August 31, 2020, Nickie Mali Lum Davis ("Lum Davis") pled guilty in the District of Hawaii to an information charging her with aiding and abetting violations of the Foreign Agents Registration Act ("FARA"). See Lum Davis (ECF No. 15). Mr. Lowell represented Lum Davis prior to and at this proceeding.

Prior to the guilty plea in 2020, Mr. Lowell was contacted by the Department of Justice's FARA Unit regarding his representation of certain other individuals. The FARA Unit requested information from Mr. Lowell, and he has communicated with the FARA Unit through retained counsel.¹ Additionally, and also before the guilty plea, certain communications of Mr.

¹ Information related to this inquiry was provided by members of the U.S. Attorney's Office for the Eastern District of New York who are not members of the Prosecution Team in the matter presently before the Court and who did not consult with or coordinate with

Lowell were reviewed by the Department of Justice as part of an investigation into an alleged scheme by an individual to obtain a pardon in exchange for campaign contributions. See Response in Opp. to Mot. to Disqualify at 9-10, Lum Davis (ECF No. 55). The potential conflict arising out of these matters were raised with Mr. Lowell and Lum Davis's other counsel prior to the guilty plea by members of the prosecution team in the Lum Davis matter; the defendant advised that she wished to proceed with Mr. Lowell as counsel and pled guilty as discussed above. See id. at 10-16. The defendant in Lum Davis now seeks to withdraw her guilty plea, based in part on the claim that Mr. Lowell's interest in the above-described matters created a conflict which she did not knowingly waive.

The government submits that the issues described above create a potential conflict of interest. As illustrated by the allegations in the pending litigation in Lum Davis, a client of Mr. Lowell being prosecuted by the Department of Justice could appeal his or her criminal matter based in part on the claim that Mr. Lowell's personal interests related to Department of Justice inquiries improperly influenced his representation of the client. While the government takes no position on the merits of the claim in Lum Davis, the government believes a Curcio inquiry is necessary to ensure that Mr. Grimes understands the risks of such a potential conflict and make a record that, if appropriate, he knowingly and intelligently waives his right to conflict-free counsel.

members of the Prosecution Team in the matter presently before the Court prior to providing such information to the FARA Unit.

Accordingly, for the foregoing reasons, the government respectfully requests that the Court notify the defendant of the potential conflicts described above and conduct an appropriate inquiry pursuant to Curcio. The Court should further advise the defendant regarding his right to conflict-free representation and determine whether he waives those rights.

Respectfully submitted,

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